

**Amendment No. 1 to HB1067**

**Sexton C  
Signature of Sponsor**

**AMEND Senate Bill No. 1309**

**House Bill No. 1067\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new section to be appropriately designated:

(a) As used in this section:

(1) "Aggravating circumstances" means conduct involving the sale or diversion of a controlled substance, as defined in § 39-17-402, practicing while impaired by a controlled substance, or other conduct involving a controlled substance that presents a danger to patients or the public;

(2) "Confirmed drug test" means a confirmed test as defined in § 50-9-103;

(3) "Drug" means a drug as defined in § 50-9-103;

(4) "Employer" means a covered employer, as defined in § 50-9-103, that is a healthcare facility licensed under title 68, chapter 11, part 2, or any other healthcare employer that employs healthcare practitioners; and

(5) "Healthcare practitioner" means any person required to be licensed, permitted, certified, or authorized:

(A) Under this title by a board or committee under the division of health-related boards specified in § 68-1-101(a)(8), who has humans for patients; or

(B) Under title 68, chapter 24, part 6; or

(C) Under title 68, chapter 140.

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(b) A healthcare practitioner violates the practitioner's practice act by refusing to submit to a drug test or testing positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test for an employer when the practitioner does not have a lawful prescription for using the drug.

(c)

(1)

(A) In order to protect the public health, safety, and welfare, the department acting through the chief medical officer of the department of health, or the designee of the commissioner of health, may issue an emergency order suspending or restricting the license, certification, permit, or authorization of a healthcare practitioner who refuses to submit to a drug test or who tests positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test for a covered employer when:

(i) Aggravating circumstances are present; and

(ii) The practitioner does not have a lawful prescription and a legitimate medical reason for using the drug.

(B) The practitioner shall be given two (2) business days from the time of notification to the practitioner of the confirmed test result to produce a lawful prescription for the drug before an emergency order is issued.

(2)

(A) In lieu of an emergency order under subdivision (c)(1), the chief medical officer or designee may refer a healthcare practitioner to the substance abuse peer assistance or treatment program of the appropriate board when there is a positive result on a confirmed drug test or a refusal to submit to a drug test that does not imperatively require emergency action under subdivision (c)(1). In such cases, the chief medical officer or designee shall forward notice of the result or refusal to the appropriate licensing board for action that may include, but not be limited to, referral to a substance abuse peer assistance or treatment program.

(B)

(i) So long as the practitioner complies with the terms and conditions of a referral to a program, the practitioner's license or certificate shall not be suspended or revoked by the appropriate board for a positive result on a confirmed drug test or a refusal to submit to a drug test.

(ii) The board shall suspend a healthcare practitioner's license, certificate, permit, or authorization when the practitioner fails to comply with the terms and conditions of the substance abuse peer assistance or treatment program.

(iii) The board is not prohibited from taking any other disciplinary action authorized by law for conduct not related to a positive result on a confirmed drug test or a refusal to submit to a drug test.

(iv) A substance abuse peer assistance or treatment program shall promptly report any failure of a practitioner to

maintain compliance with the terms and conditions of the program to the appropriate licensing board.

(d) Any drug test used for action pursuant to subsection (b) shall comply with the requirements of title 50, chapter 9. The employer of the healthcare practitioner shall promptly report, as determined by rule, a practitioner who tests positive for any drug on a confirmed drug test, or who refuses to submit to a drug test to the department.

(e) In issuing an emergency order suspending or restricting the license of a healthcare practitioner who tests positive for any drug, or who refuses to submit to a drug test, the department shall comply with the procedure set forth in § 4-5-320(c) and (d).

(f) The commissioner of health is authorized to promulgate rules to effectuate the purposes of this section. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new section to be appropriately designated:

A quality improvement committee, as defined in § 63-1-150, may share information concerning substance abuse by a healthcare practitioner licensed or certified under this title with another quality improvement committee pursuant to § 63-1-150(d)(3) or § 68-11-272(c)(3) in furtherance of the functions of the committees.

SECTION 3. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new section:

For purposes of § 4-5-320(c), the public health, safety, or welfare imperatively requires emergency action by the department of health at any time that a healthcare practitioner as defined in Section 1 tests positive for any drug on a confirmed drug test or refuses to submit to a drug test pursuant to Section 1 or engages in conduct with respect to use, possession, or diversion of a controlled substance, as defined in § 39-17-402,

that may reasonably affect the health and safety of patients or the public at large.

Notwithstanding any law, rule, or policy of a board or the department of health, emergency action by the department or the board under § 4-5-320(c) shall not require the prior approval of the attorney general and reporter.

SECTION 4. Tennessee Code Annotated, Title 50, Chapter 9, is amended by adding the following as a new section:

Notwithstanding this chapter, a covered employer who has employees who are healthcare practitioners for the purposes of Section 1 shall report a healthcare practitioner who tests positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test, or who refuses to submit to a drug test, to the department of health and the practitioner's licensing or certifying board as required by Section 1.

SECTION 5. This act shall take effect July 1, 2017, the public welfare requiring it.